

FILED
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SEP 29 2007

MARK KERNEY WEAVER,

Plaintiff,

v.

No. CIV-07-0344 MV/RHS

MRS. BURNHAM -- FORMER CAPTAIN
OF OTERO COUNTY PRISON,
MR. BARRAZA -- FORMER LT.
OF OTERO COUNTY PRISON,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court, *sua sponte* under 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), to review Plaintiff's amended civil rights complaint (the "complaint"). Plaintiff is incarcerated, appears pro se, and is proceeding in forma pauperis.

The caption of the complaint names two individuals as Defendants. Four additional individuals and an entity are named as Defendants in text. Plaintiff alleges that he suffered serious injuries when officers at the Otero County, New Mexico, Prison Facility used excessive force to extract him from his cell. Specifically, Lt. Barraza, acting on orders from Captain Burnham, sprayed mace in Plaintiff's face. Lt. Barraza then ordered an emergency response team to "take [him] down," at which time Plaintiff was "slammed . . . to the floor and shackled." He claims that Defendants' actions violated his rights under the Fourth and Eighth Amendments. The complaint seeks damages.

Plaintiff's allegations do not support claims against the named Defendant Otero County Prison Facility. "[A] detention facility is not a person or legally created entity capable of being sued."

Aston v. Cunningham, No. 99-4156, 2000 WL 796086, at *4 n.3 (10th Cir. June 21, 2000); *White v. Utah*, No. 00-4109, 2001 WL 201980, at *1 (10th Cir. Mar. 1, 2001). Plaintiff's claims against this Defendant will be dismissed.

IT IS THEREFORE ORDERED that the Clerk is directed to add to the Court's docket the parties named in the text of the complaint;

IT IS FURTHER ORDERED that Plaintiff's claims against the named Defendant Otero County Prison Facility are DISMISSED, and Defendant Otero County Prison Facility is DISMISSED as a party to this action;

IT IS FURTHER ORDERED that the Clerk is directed to forward copies of Plaintiff's amended complaint, with notice and waiver of service forms, for Defendants Burnham, Barraza, Sagula, Summers, Smalles, and Lopez.


UNITED STATES DISTRICT JUDGE